

Supreme Court, U. S.  
**FILED**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

No. **78-471**

VICTOR FALU NELSON,

*Petitioner,*

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,  
M. I., ET AL,

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1978

\_\_\_\_\_  
No.  
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VICTOR FALU NELSON,

*Petitioner,*

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,  
M. L., ET AL,

*Respondents.*

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**  
\_\_\_\_\_

The petitioner, VICTOR FALU NELSON of San Juan, Puerto Rico, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit in case No. 77-1463 whose slip Opinion appears at Appendix A, *infra*, page 1a. The denial of rehearing by the United States Court of Appeals for the First Circuit, appears at Appendix B, *infra*, page 1b.

**JURISDICTION**

The decision of the United States Court of Appeals for the First Circuit was announced on June 6, 1978. A

Petition of Rehearing dated June 15, 1978 was filed on June 19, 1978. Rehearing was denied on June 29, 1978 as appears from Appendix B, *infra*, page 1b. A petition for stay of mandate was filed on July 6, 1978 as appears at Appendix C, *infra*, page 4c, and denied on July 17, 1978 as appears at Appendix D, *infra*, page 1d by said Court of Appeals.

The petition for certiorari is timely filed under 28 U.S.C. §2101, and the jurisdiction of this High Court is invoked under 28 U.S.C. §1254(1).

### QUESTIONS PRESENTED

1. That the Supreme Court of Puerto Rico denied petitioner's civil rights by its denial of his motion for stay of the mandate to allow him time to proceed by certiorari before this Supreme Court under the provisions of its Rule 45(e)<sup>1</sup> and under the provisions of 28 U.S.C.A. 1258(3),<sup>2</sup>

<sup>1</sup>RULE 45(e) of the RULES OF THE SUPREME COURT OF PUERTO RICO reads as follows:

"(e).-In any case in which a judgment or order of this Court may be reviewed by the Supreme Court of the United States by way of certiorari, the mandate to the trial court may be retained, at the requested of a party, for a reasonable period of time. If within such a term there shall be filed with the Office of the Clerk a certificate from the Clerk of the Supreme Court of the United States establishing the fact that the petition for certiorari, the record, and the brief have been filed before that Court, the mandate shall be retained until final disposition of the petition for certiorari. Upon presentation of a copy of the order of the Supreme Court of the United States denying the issuance of the writ, the mandate shall forthwith be sent to the trial court. In the motion for retention of the mandate, the moving party shall recite the questions to be raised in the petition for certiorari, making reference to the pertinent facts and circumstances of the case."

<sup>2</sup>28 U.S.C.A. 1258(3) reads as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the  
(continued)

and consequently the Court of Appeals for the First Circuit likewise denied on June 29, 1978 this petitioner's right of review by certiorari upon confirmation of the Supreme Court of Puerto Rico in the premises.

### CONSTITUTIONAL PROVISIONS AND STATUTES

The case was originally based on the following constitutional and federal statutory provisions, to wit:

1.-The Federal Declaration Judgments Act, 28 U.S.C.A. 2201.

2.-The Supremacy Clause of the Constitution of the United States (*Article VI, Section 2*).

3.-The Due Process Clause of Amendment V to the Constitution.

4.-The Due Process Clause of Amendment XIV to the Constitution.

5.-28 U.S.C.A. 1258(3).

6.-28 U.S.C.A. 1343(3).

7.-42 U.S.C.A. 1981.

8.-42 U.S.C.A. 1983.

### STATEMENT OF THE CASE

This is a case originally filed in the United States District Court for the District of Puerto Rico (*Civil No. 77-1057*)

(footnote continued from preceding page)

validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."



which was based on the aforementioned constitutional and federal statutory provisions which protect the civil and proprietary rights of the petitioner Víctor Falú Nelson.

In said suit petitioner claimed that because of the denial of his statutory right to bring his case before this United States Supreme Court by certiorari under 28 U.S.C.A. 1258(3) and said Court's Rule 45(e) the petitioner had been left with no other alternative, but to appear before the United States District Court for Puerto Rico for the protection of his civil and proprietary rights.

It is undisputed that on August 14, 1944 petitioner Víctor Falú Nelson became hereditary owner of twenty-five per cent (25%) or one fourth part (1/4) of 2.03 cuerdas by judicial Resolution of the District Court of San Juan, Puerto Rico in Civil Case No. R-2941 of said Court, which fact was acknowledged by the Supreme Court of Puerto Rico in *IGLESIA v. FALU*, 103 DPR 611.

On August 15, 1964 petitioner Falú Nelson and respondent The Pentecostal Church of God, Inc. M. I. entered into an executory conditional contract to divide, by segregation or sale, the estate which they would hold jointly after respondent had acquired title to three fourth parts (3/4) thereof then held in common with Heraclio Falú Rosa and Heraclio Falú Nelson.

Title to the aforesaid portion of three fourth parts (3/4) of the undivided estate was acquired by respondent The Pentecostal Church on September 5, 1964 by deed Number 25 executed before Notary Public Octavio Jiménez of San Juan, Puerto Rico.

Once the respondent Pentecostal Church had become joint owner with petitioner Víctor Falú Nelson in the said estate of 2.03 cuerdas, respondent claimed that petitioner's

share of 1584.16 sq. meters had been reduced by eminent domain *after* the Contract of August 15, 1964 was signed; and petitioner objected that the so-called Eminent Domain Proceedings had occurred on June 25, 1964, and therefore, that the Contract to divide the joint estate was based on the *remainder* thereof, as of said date June 25, 1964.

The United States District Court for the Judicial District for Puerto Rico refuses to take cognizance of the case, and the Court of Appeals for the First Circuit affirmed the District Court Judgment pursuant to *P. I. Enterprises, Inc. v. Cataldo*, 457 F.2d 1012, 1015 (1st Cir. 1972).

## REASONS FOR GRANTING THE WRIT

### 1.

The decision cited in support of the judgment below is not applicable to petitioner's case because the *P. I. Enterprises, Inc. v. Cataldo* case differs fundamentally from petitioner's Complaint before the Federal District Court for Puerto Rico, and is in no way a bar to the exercise of jurisdiction in his action, inasmuch as the doctrine of collateral estoppel which precludes relitigation of issues actually adjudged in a prior suit does not apply to his complaint for a judicial declaration of his rights under the executory and conditional contract for the division of a joint estate between petitioner and respondent herein; petitioner claiming that he has been deprived without due process of more than one half (1/2) of his hereditament thru the false and misleading representations of the respondent Church.

Petitioner's case clearly submits the proposition that by means of a hoax the respondent has led the Court below to

approve without a hearing the deprivation of petitioner's civil rights and property despite the documentary evidence by him submitted to the contrary. *Nashville, Chatanooga and Saint Louis, Ry. v. Wallace*, 288 U.S. 249 (1933); *Fountain v. Filson*, 336 U.S. 681, 93 L.Ed. 971.

The Court of Appeals for the First Circuit failed to consider that the Federal District Court exceeded its judicial powers, when, despite petitioner's motion for a hearing rendered a premature summary judgment against plaintiff Víctor Falú Nelson, herein petitioner, on the erroneous assumption that it has the power to do so under its judicial discretion. *Delno v. Market Street Railway Co.*, (C.C.A. 9th 1942), 124 F.2d 965, 968; *BORCHARD*: "Declaratory Judgments", Second Edition, 294; *VAN-NEMAN AND KUTNER*: "Declaratory Judgments in the Federal Courts" (1948).

Likewise, both Courts ignored the fact that under paragraph Four Section F of his contract with the respondent Church, the petitioner Víctor Falú Nelson segregated his hereditary share of 1584.16 sq. m. in the joint estate, and said segregation was final under *Quevedo Segarra v. Board of Appeals*, 102 DPR 87 (1974). That as such his segregation had been acknowledged by the Supreme Court of Puerto Rico by its Resolution of March 14, 1977 in Certiorari No. 077-23.

Petitioner respectfully submits that the Federal District Court for Puerto Rico is not at liberty to engage in a credibility evaluation of facts for the purpose of a summary judgment of dismissal. *Johnson Farm Equipment Co. v. Ccok*, 230 F.2d 119 (1956).

A summary judgment should not be used as a substitute for a trial on facts and law, especially where the parties are

entitled to a trial by jury, and the mere fact that the trial Judge believes that plaintiff cannot win the lawsuit before a jury, does not endow him with authority to take the place of a jury and decide contested issues of fact. *Cox v. English American Underwriters*, 245 F.2d 330 (1957).

Finally, petitioner submits that both the United States District Court for Puerto Rico and the Court of Appeals for the First Circuit have failed to consider that he petitioned the Federal District Court for Puerto Rico for a declaration of his rights under the Contract of August 15, 1964 with the respondent Church under Section 12 of the Uniform Declaratory Judgment Act which makes cognizance of his controversy with the respondent Church mandatory:

*"This act is declared to be remedial; its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, statutes, and other legal relations, and is to be liberally construed and administered."* (Emphasis supplied)

For the above stated reasons, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the First Circuit as a matter of justice.

RESPECTFULLY SUBMITTED, this 25th day of August, 1978.

RAFAEL V. PEREZ-MARCHAND  
DR. SANTOS P. AMADEO  
JOSE ENRIQUE AMADEO

By: /s/ Rafael V. Pérez-Marchand  
Rafael V. Pérez-Marchand  
Counsel for petitioner Víctor  
Falú Nelson  
819 López Sicardó Avenue-Dos  
Pinos, Río Piedras, Puerto Rico-00923.  
Tel. 751-6543.

# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date three printed copies of the foregoing Petition for a Writ of Certiorari have been served, by *certified mail*, on Félix A. Ramos Cabán, Counsel for respondent The Pentecostal Church of God, Inc. M.I., at his address: P.O. Box 275, Humacao, Puerto Rico (00601). And likewise certify that another three printed copies of said petition have been forwarded, by *certified mail*, to counsel for the respondent Judges of the Supreme Court of Puerto Rico, the Hon. Héctor A. Colón Cruz, Solicitor General of the Commonwealth of Puerto Rico, at his address: Department of Justice, P. O. Box 192, San Juan, Puerto Rico-00901.-

San Juan, Puerto Rico, this 25th day of August, 1978.

/s/ Rafael V. Pérez-Marchand  
RAFAEL V. PEREZ-MARCHAND

# **APPENDIX A**

United States Court of  
Appeals for the First Circuit

No. 77-1463

(NOT FOR PUBLICATION)

VICTOR FALU NELSON,  
Plaintiff-Appellant,  
v.

THE PENTECOSTAL CHURCH OF GOD, INC.,  
M. I., ET AL.,  
Defendant-Appellees.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO  
(Hon. Juan R. Torruella, U.S. District Judge)

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Before COFFIN, Chief Judge,  
CAMPBELL and BOWNES, Circuit Judges.

*Rafael V. Pérez-Marchand, Santos P. Amadeo, and José Enrique Amadeo, on brief, for appellant.*

*Félix A. Ramos-Cabán, for appellee The Pentecostal Church of God, Inc., M. I. Solicitor General, on brief, for co-defendants, appellees, The Justices of the Supreme Court of Puerto Rico in support of motion for summary dismissal.*

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June 6, 1978



BOWNES, *Circuit Judge*. Appellant, dissatisfied with the outcome in which his contract dispute with appellee, The Pentecostal Church of God, Inc., M. I., was handled by the courts of the Commonwealth of Puerto Rico, sought relief in the federal district court. The district court dismissed his complaint on the ground that the state court judgment estopped action in the federal court. We affirm on an additional ground. Federal district and circuit courts lack jurisdiction to review decisions of the Supreme Court of Puerto Rico. Review of these decisions may only be sought in the Supreme Court of the United States. 28 U.S.C. §1258.

*The judgment of the district court is affirmed.*

## APPENDIX B

### UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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NO. 77-1463

VICTOR FALU NELSON,  
Plaintiff, Appellant,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,  
M. I., ET AL  
Defendants, Appellees.

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### ORDER

Entered June 29, 1978

The petition for rehearing is denied. By denying the motions for retention of the mandate and for reconsideration thereof, the Supreme Court of Puerto Rico was not "blocking" appellant's alleged right to review in the United States Supreme Court. Stay of the mandate is not a prerequisite to obtaining review by the United States Supreme Court. See U.S. Sup. Ct. Rules 21 & 22; 28 U.S.C. §2101.

Furthermore, appellant does not appear to understand fully the bases of our decision affirming the judgment of the district court. We affirmed not only because the district court lacked jurisdiction to review the decision of the

Supreme Court of Puerto Rico, but also because "the state court judgment estopped action in the federal court". In other words, further review of the contract issues was barred by the doctrine of collateral estoppel. *P. I. Enterprises, Inc. v. Cataldo*, 457 F.2d 1012, 1015 (1st Cir. 1972).

By the Court:

(signed) DANA H. GALUP  
Clerk.

cc: Messrs. Pérez-Marchand, Ramos Cabán and Colón Cruz)

## APPENDIX C

### UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

NO. 77-1463

VICTOR FALU NELSON,

Plaintiff-Appellant,

vs.

THE PENTECOSTAL CHURCH OF GOD, INC.,  
M. I., ET AL.,

Defendant-Appellees.

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- MOTION FOR STAY OF MANDATE UNDER THE PROVISIONS OF RULE 41 OF APPELLATE PROCEDURE.-

#### TO THE HONORABLE COURT:

COMES NOW appellant Víctor Falú Nelson, and thru his undersigned Counsel, respectfully shows:

1.-That being dissatisfied with both Judgment rendered on June 6, 1978, and Order dated June 29, 1978 denying his Petition for Rehearing, on this same date has moved to file Certiorari under Rule 10 of the Rules of the Supreme Court of the United States, under 28 U.S.C.A. 1258.

2.-That Rule 36 of the Rules of Appellate Procedure, states as follows:

#### "ENTRY OF JUDGMENT

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of

the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. *If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court.* The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment. (Emphasis supplied).

3.-That the Opinion rendered by Hon. *Bownes*, Circuit Judge in the above-captioned case, affirming the Judgment of the District Court states: "*Review of these decisions may only be sought in the Supreme Court of the United States, 28 U.S.C. §1258.*"

4.-And by its Order dated June 29, 1978 this Honorable Court states: "*Stay of the mandate is not a prerequisite to obtaining review by the United States Supreme Court. See U.S. Sup. Ct. Rules 21 & 22; 28 U.S.C. §201.*" (emphasis supplied)

5.-That Rule 41 of the Rules of Appellate Procedure, states as follows:

(a) Date of Issuance.-The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to the costs shall constitute the mandate, unless the court directs that a formal mandate issue. *The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court; If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.* (emphasis supplied).

(b) Stay of Mandate Pending Application for Certiorari.

A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the court of appeals a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

6.-As the appellant's Notice of Appeal seeks reviews of the Judgment and Order rendered by this High Court under 28 U.S.C.A. 1258 thru the writ of Certiorari, and complying with Rules 21 and 22 of the Supreme Court, 28 U.S.C. 2101, he respectfully prays that this Honorable Court retain its mandate, or if already forwarded, order its delivery to the Clerk's Office, until notice of the Clerk of the Supreme Court of the United States if received by the Clerk of this High Court, within the period of thirty (30) days, in which herein appellant shall file the corresponding writ before said Court, after being previously aware of the docketing of his appeal.

RESPECTFULLY SUBMITTED, this 6th day of July, 1978.

RAFAEL V. PEREZ MARCHAND  
DR. SANTOS P. AMADEO  
JOSE ENRIQUE AMADEO

By: (signed) Rafael V. Pérez Marchand  
Counsel for plaintiff appellant

Víctor Falú Nelson  
819 López Sicardó-Dos Pinos,  
Río Piedras, Puerto Rico-00923.  
tel. 751-6543.

# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a true copy of this Notice of Appeal, has been served, by *certified mail*, on Félix A. Ramos Cabán, Counsel for defendant appellee THE PENTECOSTAL CHURCH OF GOD, INC. M. I., at his address: P. O. Box 275, Humacao, Puerto Rico (00661). And likewise on counsel for the co-defendant Judges of the Supreme Court of Puerto Rico, the Hon. Héctor A. Colon Cruz, Solicitor General of the Commonwealth of Puerto Rico, at his address: Department of Justice, P. O. Box 192, San Juan, Puerto Rico (00901).

I also certify that true copy of this Motion For Stay of Mandate Under the Provisions of Rule 41 of Appellate Procedure, has been forwarded by mail to the Clerk for the United States Supreme Court, Washington, D. C. on this same date.

San Juan, Puerto Rico, this 6th day of July, 1978.

(signed) Rafael V. Perez Marchand  
**RAFAEL V. PEREZ MARCHAND**  
 Counsel for plaintiff appellant  
 Víctor Falú Nelson  
 tel. 751-6543

# **APPENDIX D**

## **UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

NO. 77-1463

**VICTOR FALU NELSON,**  
 Plaintiff, Appellant,

v.

**THE PENTECOSTAL CHURCH OF GOD, INC.**  
**M.I., ET AL,**  
 Defendants, Appellees.

## **ORDER OF COURT**

Entered: July 17, 1978

Upon consideration of appellant's motion for stay of mandate and/or recall of mandate,

It is ordered that said motion be, and the same hereby is, denied.

By the Court:

**DANA H. GALLUP, Clerk.**

By: (signed) Francis P. Seigliano  
 Chief Deputy Clerk.

**APPENDIX E**

**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

---

NO. 77-1463.

VICTOR FALU NELSON,  
Plaintiff, Appellant,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.  
M. I., ET AL.,  
Defendants, Appellees.

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**JUDGMENT**

Entered: June 6, 1978

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

/S/ DANA H. GALLUP,  
Clerk.

(cc: Messrs. Pérez-Marchand, Ramos-Cabán and Colón  
Cruz)